STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED August 25, 2005
v	No. 261328 Oakland Circuit Court
DENNIS WILLIAMS, Defendant-Appellee.	LC No. 2005-008231-AR

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

The prosecution appeals by leave granted the circuit court's February 24, 2005, order denying its application for leave to appeal the 43rd District Court's December 21, 2004, order suppressing evidence seized as a result of executing an allegedly improperly granted search warrant.[1] We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, the prosecution argues that the district court erred when it granted defendant's motion to suppress the evidence obtained from the execution of the search warrant. When considering a ruling on a motion to suppress evidence, this Court reviews the trial court's findings of fact for clear error, giving deference to the trial court's resolution of factual issues. *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005); *People v Bolduc*, 263 Mich App 430, 436; 688 NW2d 316 (2004). A finding of fact is clearly erroneous if, after a review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made. *Id*. The appellate court may not substitute its judgment for that of the trial court or make independent findings. *Id*. However, the trial court's ultimate decision on the motion to suppress is reviewed de novo. *Id*.

The district court granted defendant's motion to suppress the evidence obtained from the execution of the search warrant because it found that the search warrant affidavit did not establish "probable cause" to issue a search warrant. The district court specifically found that the

[1] The district court subsequently entered an order granting defendant's motion to dismiss on March 17, 2005.

information contained in the search warrant affidavit was a result of police misconduct, and thus, should not have been considered by the magistrate when he was determining whether "probable cause" existed to issue a warrant.

"Probable cause to issue a search warrant exists where there is a 'substantial basis' for inferring a 'fair probability' that contraband or evidence of a crime will be found in a particular place." *People v Kazmierczak*, 461 Mich 411, 417-418; 605 NW2d 667 (2000). A "finding of reasonable or probable cause shall be based upon all the facts related within the affidavit." MCL 780.653.

> The affidavit may be based upon information supplied to the complainant by a named or unnamed person if the affidavit contains 1 of the following:
>
> (a) If the person is named, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information.
>
> (b) If the person is unnamed, affirmative allegations from which the magistrate may conclude that the person spoke with personal knowledge of the information and either that the unnamed person is credible or that the information is reliable. [MCL 780.653.]

The reliability of information given by an unnamed person can be established by police corroboration and investigation of the information. *People v Levine*, 461 Mich 172, 180-181; 600 NW2d 622 (1999).

In regard to the anonymous tip contained in the search warrant affidavit, we conclude that it could properly be used to establish "probable cause." The specific details given by the anonymous informant could lead the magistrate to conclude that the anonymous informant spoke with personal knowledge, and the reliability of the information from the unnamed source was established by police corroboration and investigation. The affiant, Detective D. Spellman (Spellman) of the Ferndale Police Department, established that the dealer named by the anonymous source, Cornelius Lamont Williams (Cornelius),[2] had previously engaged in the sale of marijuana to Spellman while Spellman was undercover. The vehicle described by the source was the same vehicle that Cornelius used when he sold marijuana to Spellman. And finally, when Spellman was monitoring Cornelius' residence, Spellman witnessed Michael Sandusky (Sandusky) enter the residence and leave thirty seconds later, and was later told by Sandusky that the marijuana found on Sandusky's person was sold to him by Cornelius.

In regard to the information supplied by Sandusky, we conclude that it could also properly be used to establish "probable cause." Sandusky was a named informant and the magistrate could conclude that Sandusky's information came from personal knowledge because Spellman stated that he witnessed Sandusky enter Cornelius' residence for a brief period of time. Furthermore, despite defendant's argument to the contrary, we conclude that the information provided by Sandusky was not the fruit of police misconduct.

[2] Cornelius is defendant's brother and resides in the same house as defendant.

The police can conduct an investigatory stop if they have a "reasonable articulable suspicion" that the person being stopped is engaging in criminal activity. *People v Oliver*, 464 Mich 184, 191-193; 627 NW2d 297 (2001). Fewer facts are needed to establish reasonable suspicion when a person is in a moving vehicle than in a house, but a minimum threshold of reasonable suspicion must be established to justify an investigatory stop. *Id*. In determining whether the totality of the circumstances established reasonable suspicion to support an investigatory stop, the circumstances must be viewed as understood by law enforcement officers based on common sense and everyday life experiences. *Id*.

In this case, Spellman had received a corroborated tip from an anonymous party that Cornelius was selling drugs out of his residence. Spellman was surveying the residence and witnessed Sandusky pull up, enter Cornelius' house and leave approximately thirty seconds later. Therefore, based on the circumstances, we conclude that Spellman had reasonable suspicion to order an investigatory stop of Sandusky. *Oliver*, *supra* at 191-193. Moreover, even if it were found that the police illegally stopped Sandusky's vehicle, defendant cannot challenge the stop because he does not have standing to do so. *People v Wood*, 447 Mich 80, 89; 523 NW2d 477 (1994). Thus, it was proper for the magistrate to consider the information provided by Sandusky to determine whether "probable cause" existed to issue a search warrant.

Based on the proper information provided in the search warrant affidavit (the corroborated anonymous tip and information from Sandusky), there was a "substantial basis" for inferring a "fair probability" that contraband or evidence of a crime would be found in Cornelius' residence. Therefore, the magistrate properly issued the search warrant in question. MCL 780.653; *Kazmierczak*, *supra* at 417-418;.

A magistrate's decision to issue a search warrant should be upheld so long as there is "a 'substantial basis' for the finding of probable cause." *People v Russo*, 439 Mich 584, 603; 487 NW2d 698 (1992). The magistrate's determination "of probable cause should be paid great deference by reviewing courts." *Id*. at 604. Since the magistrate found that there was probable cause to issue a search warrant, and we have concluded that the magistrate acted properly in doing so, we hold that the warrant was properly issued. Therefore, the district court erred when it entered an order suppressing the evidence obtained during the execution of the search warrant. See *id*. at 603-604.

We reverse the district court's December 21, 2004, order granting defendant's motion to suppress the evidence obtained from the execution of the search warrant, and thereby reinstate the possession of marijuana – second offense charge against defendant.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens